IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.326 of 1993

For Approval and Signature:
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
STARLIGHT SILK MILLS PVT LTD - Respondent(s)

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Appearance :
MRS MM BHATT for Applicant No(s).: 1.
MR MANISH J SHAH for Respondent No(s).: 1.

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CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI
Date : 03/08/2005

ORAL JUDGMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The Income-tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following question under Section 256(1) of the Income-tax Act, 1961 (the Act) at the instance of CIT, Surat.

> "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in confirming the order of the CIT(A) allowing investment allowance on the electric installation, transformer and A.C. Plant ?"

2. The Assessment Year is 1982-83 and the relevant accounting period is year ended on 30th September, 1991. During the year, following machineries were installed costing Rs.86,37,475/-.

1	Crimping machine No.1	39,00,250
2	Crimping machine no.2	39,02,945
3	Air condition plant	4,45,452
4	Electric Installations	1,92,753
5	Transformer	1,60,940
6	Platform scale	10724
7	Pump Set	10042
8	Cleaner	6342

		86,37,475

The assessee claimed investment allowance on the said sum of Rs.86,37,475/-. The Assessing Officer disallowed investment allowance on three items viz. Air Conditioning Plant, Electric Installations and Transformer. The reasons advanced by the Assessing Officer are that "These machineries constitute

separate self contened units and are to be seen as such. The mere fact that it helps to run the other art silk machineries cannot make it part of the integrated machinery for manufacture of art silk.”.

3. The assessee carried the matter in appeal before the CIT (Appeals), who upheld the claim of the assessee vide order dated 23rd March, 1988. The Tribunal dismissed the departmental appeal filed by the Revenue against the order of the CIT (Appeals).

4. It has been found by the Tribunal that for being eligible to grant of investment allowance under Section 32A of the Act it was not necessary for the assessee to establish that each item of plant & machinery should be directly used in the process of manufacturing. That once plant & machinery was used for the purpose of the assessee's business of manufacturing art silk cloth it would become eligible for grant of investment allowance provided other conditions stand fulfilled. The Tribunal has further found that the Assessing Officer has not disputed that other conditions stipulated under Section 32A of the Act are not fulfilled. It has

further found that all these items of machinery are used by the assessee for the purpose of its business of manufacturing art silk cloth and other products.

5. Heard Mrs.M.M.Bhatt, learned Standing Counsel for the applicant – Revenue. It was submitted that the Tribunal had erred in not restoring the order of the Assessing Officer. That all plant & machinery on which investment allowance is claimed by an assessee are required to be wholly used for the purpose of the business as required by Section 32A of the Act, and this means directly used for the purpose of manufacture. She, therefore, submitted that the approach of both the Commissioner (Appeals) and the Tribunal was not correct and the Tribunal's order confirming the order of CIT (Appeals) granting investment allowance was required to be reversed.

6. As against that Mr.Manish J. Shah, learned advocate for the respondent – assessee, submitted that CIT (Appeals) has accepted the submission made on behalf of the assessee that all machineries and plant are put together and put into operation by making them a single composite unit without which no production

was possible. That any one of the items de hors the other plant & machinery cannot be operated for the business of the assessee and all items of machineries are integrated into a plant constituting single unit for manufacturing.

7. As can be seen from the findings recorded by the Assessing Officer there is no dispute as to the fact that the three items, on which investment allowance was not granted, are plant & machinery. Once the Revenue accepts that these items are plant & machinery, the limited question that would survive is whether the said items of plant & machinery are used for the purpose of business of the assessee. On the positive side there is a concurrent finding recorded by the CIT (Appeals) and the Tribunal that these items constituted an integrated plant and are not items which can be operated independent of each other for the purpose of the business of the assessee. On the negative side it is not the case of the Revenue that any of the prohibition specified by proviso to sub-section (1) of Section 32A of the Act operates. Nor is it the Revenue's case that the necessary reserve was not created.

8. In light of this position the finding recorded by the CIT (Appeals) and the Tribunal concurrently holding that the three items form part of a consolidated manufacturing plant remains undisturbed and there is no material brought on record to dislodge the said finding. In the circumstances, the Revenue having not even attempted to make a case that the said plant & machinery are used for any other purpose, there is no infirmity in the impugned order of the Tribunal so as to merit interference.

9. The question referred for the opinion of this Court is, therefore, answered in the affirmative, that is to say, the Tribunal was justified in confirming the order of CIT (Appeals) allowing investment allowance on Electrical Installations, Transformer and A.C. Plant. The question is, accordingly, answered in favour of the assessee and against the Revenue.

10. The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-

[D.A. MEHTA, J] [H.N. DEVANI, J]

*Bhavesh**